IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1872 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MALABEN W/O DHIRU DEVA CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1872 of 2002

MR ARVIND K THAKUR for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 20-12-2001 passed by the

Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the authority through on 26-12-2001 and it has been rejected by the authority on 30-12-2001, but same was communicated to detenu on 11-1-2002 and, therefore, there is a delay in considering the representation and communicating the decision to the detenu. In this connection, he has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the detenu has sent the representation on 26-12-2001 to the authority and though it was rejected on 30-12-2001, same has been communicated to the detenu on 11-1-2002 and hence, there is a delay in deciding the representation and communicating the same to detenu. Learned AGP has fairly admitted the same. However, no satisfactory

explanation has been putforward by the authority for the said delay. Since no satisfactory explanation has been putforth by the said authority for the said delay, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 20-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Smt.Malaben, W/o Dhiru Deva Chhara is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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